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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 3RD DAY OF APRIL 1998

BEFORE :

THE HON'BLE MR.JUSTICE TIRATH S.THAKUR

WRIT PETITION Nos.21008/97, AND
24613-14/1997.

In W.P.No.21008/1997.

BETWEEN :-

1. M/s.Jay Jee Service Station,
Richmond Circle,
Bangalore, by its Proprietor,
Mr.Joseph Paramel,Major.

2. Mr.Joseph Paramel,
as a Legal Heir of late
Jamima Papachen
No.5, Clark Road,
Richards Town,
BANGALORE-560 005.

...Petitioners.

(By Sri.S.Devadas, for M/s.Nyayamitra,Adv.,)

A N D :

1. M/s.Syndicate Bank
Shoolay Branch, No.28,
Residency Road,
Bangalore-26,
by its Chief Manager.

2. Debts Recovery Tribunal,
(Andhra Pradesh and Karnataka),
by its Registrar,
Krishi Bhagavan,
Hudson Circle, Nrupatunga Road,
BANGALORE-2.

(By Sri.Radhesh Prabhu, for
M/s.Tukaram S.Pai,for R-1)

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This writ petition filed praying to quash the order dated 14-7-1997 vide Annexure-D by R-2; etc.,

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In W.P.Nos.24613-14/1997.

BETWEEN :-

1. Dr.R.Morarka,
s/o Ramkumar Morarka,
Major,
R/at No.24-D,
Carmicheal Road,
BOMBAY - 400 026.

2. Sushil R.Morarka,
s/o Dr.R.Morarka,
Major, R/at No.24-B,
Carmicheal Road,
BOMBAY - 400 026.

...Petitioners.

(By Sri.Chaitanya Hegde, Adv.,)

A N D:

1. Vijaya Bank,
Hospet Branch,
Hospet,
Bellary District.

2. Tungabhadra Pulp & Board,
Mills Limited,
Munirabad (R.S)-583 234,
Koppal Taluk,
by its Managing Director.

3. The Court of the Civil
Judge, Hospet,
at Hospet,
Bellary District.

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4. Debts Recovery Tribunal,
(Andhrapradesh & Karnataka)
Krishi Bhavan,
Hudson Circle
Nrupathunga Road,
Bangalore - 560 002.
...Respondents.

(By Sri.Urval N.Ramadas,Adv., for R-1)

This writ petition filed praying to declare that the R-4 has not jurisdiction to proceed with the O.A.No.338/95 on its file; and direct R-4 to remit the records of O.S. No.14/90 received by it from the R-3; etc.,

These writ petitions coming on for prly.hearing on 'B' group, the same having been heard and reserved for pronouncement of order, the Court made the following order :

ORDER

Common questions of law arise for consideration in these two petitions which shall stand disposed of by this common order. The questions relate to the true and correct interpretation of the provisions of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 and the Rules framed thereunder. The controversy arises against the following backdrop.

2. O.S.No,5063/92 was filed by the Syndicate Bank against the petitioners in W.P.No.21008/97 in the City Civil Court at Bangalore for the recovery of a sum of Rs.13,38,263.45 in connection with two facilities

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extended to the said petitioner by way of loan and over draft against two sets of documents separately executed for each one of the said facilities. Similarly O.S.No.14/90, was filed by the Respondent Vijaya Bank, against the petitioners in W.P.Nos.24613-14/97 claiming a decree for a sum of Rs.117,03,394-89 on account of two facilities one by way of Open Loan Cash Credit and the other by way of Import Letter of Credit facility, extended by the plaintiff/Bank to the petitioners. With the coming into force of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, both the suits were transferred in terms of Sec.31 of the Act, to the Debt Recovery Tribunal, at Bangalore, where the same were registered as O.A.No.18/96 and O.A.No.338/95 respectively. The petitioner in W.P.No.21008/97 then moved an I.A. before the Tribunal, in which they challenged its jurisdiction to entertain and proceed with O.A.No.18/96 primarily on the ground that continuance of the proceedings before the Tribunal, on transfer from the Civil Court, were hit by Rule 10 of the Debt Recovery Tribunal (procedure) Rules, 1993. The Tribunal examined the question raised before it and by its order dated 14th July, 1997, while rejecting the contentions urged on behalf of the petitioners dismissed the I.A.filed

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by them. Aggrieved, W.P.No.21008/1997 has been filed by the petitioners assailing the validity of the said order and for a declaration that the Tribunal is bound to follow the procedure prescribed by Rule 10(supra) even in suits that are transferred to it under Sec.31 of the Act. To the same effect is the prayer made in W.P.No.24613-24614/1997.

3. M/s.S.P.Shankar, and Chaitanya Hegde, Counsel appearing on behalf of the petitioners argued that Rule 10 of the Debt Recovery Tribunal (Procedure) Rules,1993, permitted the filing of an application based on a single caue of action only. They urged that the Rule contained a prohibition against the filing of applications by the Banks seeking a relief or reliefs, based on more than one of action. This Rule against plural remedies, it was contended, implied that the application filed before the Tribunal, should not only be based on a single cause of action but the said cause must be in respect of a debt of more than Rs.10 lakhs. That is because debts of Rs.10 Lakhs and above alone fall within the jurisdiction of the Tribunal in the absence of any notification under Sec.1(4) of the Act, authorising filing applications

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of lesser amounts also. The contention in other words was that a suit pending in any Civil Court on the date of the promulgation of the Act, could in terms of Sec.31, be transferred to the Tribunal only if the same satisfied the requirement of Rule 10, in that the suit was based on a single cause of action and the cause of action was one which if it had arisen after the establishment of the Tribunal would be within its jurisdiction. Since both the suits with which we are concerned, in these writ petitions were according to the learned Counsel, based on more than one causes of action, the same could not have been either transferred by the Civil Court or tried by the Tribunal.

4. Counsel for the Respondents on the other hand contended that Rule 10 of the procedure Rules had no application to suits that had been instituted before the Competent Civil Courts prior to the promulgation of the Act. Such suits it was contended constituted a class by themselves, which would by reason of Sec.31 stand transferred to the Tribunals established under the Act, if the debt claimed in the same was one triable by the said Tribunal. It was urged that the expression 'Cause of Action' appearing in Sec.31 ought to be given a liberal

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interpretation so as to include the sum, total of the relief which the plaintiff in the suit may have claimed against the defendant, no matter such relief arose in the context of more than one loan or other transactions between the parties.

5. In order to properly appreciate the contentions urged at the Bar it is necessary to briefly refer to the Scheme underlying the Act and some of the provisions contained therein. The Act it is apparent from a reading of its preamble is aimed at establishing Tribunals for an expeditious adjudication and recovery of debts due to Banks and financial Institutions. It provides a speedy remedy for resolving disputes arising out of loan and other financial transactions between such institutions and their borrowers. The provisions are however applicable only where the amount of debt due to any Bank or financial institution or to a consortium of Banks and financial institutions is not less than Rs.10 lakhs or such other amounts not less than Rs.1 lakhs, as the Central Government may by Notification specify. The term 'Debt' is in turn defined by Sec.2(g) of the Act, to mean any liability (inclusive of interest) which is alleged to be due from any person to a Bank or financial

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institution or to a consortium of Banks or financial institutions during the course of any business activity undertaken by the Bank or by the Financial Institutions whether secured or unsecured or whether payable under a Decree or order of a Civil Court or otherwise and subsisting on the date of the application. Sec.17 of the Act, empowers the Tribunal from the appointed date to exercise jurisdiction, power and authority to entertain and decide applications from banks and financial institutions for recovery of debts due to such Banks and Financial Institutions, whereas Sec.18 excludes the jurisdiction of the Civil Courts and other authorities, in regard to matter specifiedin Sec.17. Sec.19 of the Act, prescribes, the procedure to be followed by the Tribunal and inter alia provides that a Bank of Financial Institution may make an application to the Tribunal, for the recovery of any debt due from any person and that such an application shall be in such form and be accompanied by such documents as may be prescribed. The second proviso to sub sec.(2) to Sec.19 excludes in its application to suits transferred u/s.31, the provisions contained in sub Sec.(2) in so far as the same relate to payment of fee prescribed therein. Sec.31 of the Act, directs that every suit or other

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proceeding pending before any Court immediately before the date of establishment of a Tribunal under the Act being a suit or proceeding the cause of action whereon it is based is such that it would have been if it had arisen after such establisnment within the jurisdiction of such Tribunal, shall stand transferred to the Tribunal, provided that appeals pending before any Court shall not be so transferred. Upon transfer of any such suit, or other proceeding, so far may be in the same manner as in the case of an application made under Sec.19 from the stage which was reached before such transfer or from any earlier stage or even de-novo as the Tribunal may deed fit.

6. Reference may also be made at this stage to the Debt Recovery Tribunal (Procedure) Rules 1993 framed by the Central Government under Section 36 of the Act. Rule 4 of the said Rules provides that an application shall be presented in the form annexed to the Rules by the applicant in person or by his agent, whereas Rules - ~~in the following~~

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5, 6 and 7, regulate the presentation, scrutiny, and the fee payable on such applications. Rules 8, and 9 relate to the contents and the documents required to accompany the application whereas Rule 10 which is thevery basis of the contentions urged on behalf of the petitioners relates to plural remedies and reads thus :-

> "Rule-10 :- An applicant shall not seek relief or reliefs based on more than a single cause of action in one single application unless the reliefs prayed for are consequential to one another."

7. From a careful reading of the Rules, it would appear that the same do not operate retrospectively. They provide the procedure that the applicant is required to follow while filing applications after the Tribunals are established. The Rules do not it is significant to note make any provision as regards the form, or the contents, of the plaints/suits that get transferred to the Tribunal in terms of Sec.31 of the Act. It is therefore safe to assume that all such suits are free from any procedural or other requirements such as the forms prescribed for the applications, the filing of the documents with the same, or even the filing

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of the reply and other documents by the Respondents, if such reply and documents stood arleady filed before the Civil Court concerned. In other words the proceedural rules will have no application to what is not instituted for the first time before the Tribunal and what is received from the competent Civil Court in terms of Sec.31. Such transferred suits would then constitute a class by themselves to which requirements of the form of the applications otherwise prescribed by the procedure Rules, would have no application. Reliance by the Defendants upon the provisions of Rule 10, qua suits that are transferred from the Civil Courts was thus misplaced.

8. Let us now examine the issue from the stand point of Sec.31 of the Act. A closer look Sec.31(2)(b) which empowers the Tribunal to deal with the transferred suits or other proceedings, would show that the Tribunal is while dealing with such cases, required to do so, "so far as may be" in the same manner, as in the case of an application made under Sec.19 from the stage which was reached before such transfer or from any earlier stage as it may deed fit. The expression "so far as may be " appearing in Sec.31 (2)(b) would in my opinion imply that upon

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" a suit or proceeding, cause of action whereon it is based, is such that it would have been if it had arisen after such establishment within the jurisdiction of such tribunal", must be interpreted to mean a single cause of action constituting the basis of the suit and not two or more cause of action which may have been clubbed together by the plaintiff as was indeed permissible under the C.P.C., while seeking a decree. When so viewed, suits in which the plaintiff had set up more than one cause of action and thereby taken the debt claimed to Rs.10 lakhs or more, could not according to the Counsel be within the comprehension of Sec.31 so as to be transferrable to the Tribunal.

10. The expression "Cause of Action" has not been defined either by the Act or the Procedural Rules framed thereunder. Even the C.P.C., does not provide any definition to that expression. There is all the same a profusion of judicial authority as to the meaning that can be assigned to the expression. Generally speaking, the expression has been understood to mean the bundle of facts which the plaintiff must prove in support of his right to the judgment. The expression

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has a dual meaning, one relevant to the jurisdiction of the Court and the other to the basis of the claim. When seen in the context of the basis of a claim the expression has a restricted meaning whereas if used in relation to the jurisdiction of the Court, it enjoys a wider meaning . In the restricted sense, it includes facts, constituting infringment of the right and is thus the cause which is the foundation of the suit whereas in the wider sense it includes the facts constituting the right itself, See JAHARLAL PAGALIA .v. UNION OF INDIA / AIR 1959 Cal. 273/.

11. My noble brother Raveendran J., also had an occasion to refer to the judicial pronouncement on the subject in SMT.GERTY SUVARNA & ANOTHER .v. UNION OF INDIA & OTHERS /W.P.No.25898/1997/ decided on 16th of October 1997 where an objection regarding maintainability of an application before the Tribunal was raised in near similar circumstances on the basis of Rule 10 of the Procedure Rules. This Court observed that the expression "Cause of Action" has different meaning in different contexts ~~in the file~~

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in different circumstances. Its meaning may be restricted wide, compendious contractual and even contextual. The use of words "Single Cause of Action" in Rule 10, was held to be in the context of regulating the manner of filing the applications before the Tribunal for recovery of amounts due to Banks and Financial Institutions and the words "Seeking relief or reliefs based on more tha-n a single cause of action" were held to have been used in relation to the basis of the claim and not the jurisdiction of the Tribunal. When seen in the light of the above, the expression "Cause of Action" used in Section 31, falls in the 2nd category. The expression has been used in that provision in the context of the jurisdiction of the Tribunal and not in the restricted sense in which it is used in Rule 10. The emphasis in Sec.31 is on the "Cause of Action" being within the jurisdiction of the Tribunal which signifies that the expression has been used in the wider context of determining the jurisdiction of the Tribunal and not in the narrower sense of being the basis of the suit.

12. Three situations may arise in relation to the suits that are transferred in terms of Sec.31 namely; 1) suits in which more than one causes of action have been joined by the plaintiff but the debt claimed on

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the basis of each one of such causes of action is within the jurisdiction of the Tribunal being more than Rs.10 lakhs or such other amount as the Central Government may by a Notification specify. In such cases, there would be no difficulty either in the transfer of the suits or trial thereof by the Tribunals for the debt claimed as also the cause of action are both within the jurisdiction of the Tribunal, if the same had arisen after the establishment of the Tribunals. Merely because the plaintiff had joined more than one causes of action in the suit each one out of which if the same had arisen after the establishment of the tribunal, would be within the jurisdiction of the tribunal, would not either render the transfer or the trial of the transferred suit by the Tribunal invalid, in the absence of any provision in the Act or the rules requiring the plaintiff or the Tribunal to split the causes of action for separate trials; 2) The second category is of cases in which one of the causes of action joined by the plaintiff in the civil suit is within the jurisdiction of the Tribunal but the rest being for lesser amounts are not. Even in such cases in the absence of any provision which may require the Tribunal to reject the plaint or direct the splitting of the cause of action for separate trials,

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the transfer of the entire suit including the causes of action which have been joined and which may not otherwise have been within the jurisdiction of the Tribunal would be permissible. The third category comprises cases where the debts claimed on the basis of different transactions individually are for amounts less than the one prescribed under Sec.1(4) of the Act, but cumulatively go beyond the amount prescribed by the said provision. The real difficulty is encountered not only in this class of cases for it is here that ~~the~~ does the expression "Cause of action" appearing in Sec.31 assumes importance but even the question whether different transactions constitute one single cause of action arises for determination. A liberal interpretation notwithstanding if what is joined in the suit are distinctly different causes of action each one of which is for a debt less than the amount prescribed under Sec.1(4), such a suit may not be transferable simply because the total amount claimed is for an amount beyond the minimum. Even the widest of interpretations of the term 'cause of action' cannot support, the argument that the jurisdiction of the Tribunal to try the same should be determined by reference to the sum total of the claims based on all the causes of action

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available against the defendant no matter each such cause of action is unconnected with the other and would not have been triable by the Tribunal if the same had arisen after its establishment. This is however subject to the Caveat, that the causes of action joined in the suit are different. This difference must be real and not just superficial. Just because the borrower has taken more than one facilities or executed more than one sets of documents may not be conclusive of the matter. Such transactions or series of transactions may be no more than links in the chain of an over all scheme which the Bank or the Financial Institution may have agreed to or conceived in relation to a particular project or business. Whether or not, therefore different facilities extended to the defendant would constitute different transactions independent of each other so as to give rise to different causes of action will have to be judged in the facts and circumstances of each case. It is too broad a proposition to say that execution of separate documents or grant of separate banking facilities can in no situation constitute one single cause of action. Take for instance, a case in which the bank or the financial institution grants a loan on the basis of a Project Report submitted to it for the purchase of

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land and machinery. Any such loan may be a part of an over-all or a broader financial scheme or arrangement, whereunder the Bank may also undertake to grant an over-draft facility for enabling the enterpreneur to carry on his business or an advance by way of working capital. The two transactions even though apparently independent may have an intrinsic co-relation with each other for one may be granted for the success of the other. In any such situation just because two sets of documents have been executed or two transactions have taken-place at two different points of time may not by itself give rise to two causes of action. When viewed in the wider perspective such transactions may constitute one single cause of action capable of being brought before the Tribunal in a single action for recovery of the debt claimed. Suffice it to say that the question whether two or more than two different transactions constitute one cause of action shall have to be viewed in the context of the averments made in the plaint and the co-relation which is established between such transactions so as to give rise to a single cause of action. It is true that in SMT.GERTY SUVRNA's case (supra) dealt with by this Court, the causes of action were held to be different by this Court as different

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documents had been executed at different points of time in favour of the Bank. But that was because there was no question of one facility granted to the petitioner having any connection with the other. One of the facilities was a housing loan whereas the other was a secured loan for the purchase of a Car and thus wholly unconnected with each other. It was in that context that the two transactions evidenced by two sets of documents at two different points of time were considered to be independent of each other giving rise to different causes of action. A joint petition was all the same held maintainable because the security provided by way of a mortgage was common to the two transactions. The enforcement of one liability was held to the consequential to the other having regard the provisions to Section 67A of the Transfer of property Act, and therefore, permissible under Rule 10. That was also a case of fresh institution before the Tribunal and not a suit transferred from the Civil Court.

13. In the present two cases, the suit filed against the petitioner in W.P.Nos.24613-14/97 falls in the first category ~~of~~ namely cases where both the cause of action joined in the suit (assuming that the transactions constituting the basis of the suit gave rise to different

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causes of action) are for amounts more than Rs.10 lakhs and therefore would have been within the jurisdiction of the Tribunal if they had arisen after its establishment. The transfer of the said suit or its trial by the Tribunal cannot therefore be found fault with.

14. In so far as W.P.No.21008/1997 is concerned, the total debt claimed in the same is Rs.13,38,263-45 which has its genesis in two facilities granted to the petitioners one by way of loan and the other by way of an over-draft facility. While the petitioners argued that the two facilities were independent of each other and constituted two distinct causes of action which taken independently would not have been within the jurisdiction of the Tribunal, the Respondent Bank claims that the two facilities were granted to the same set of individuals against the same securities and on the same date. The Tribunal has on a consideration of the material on record, in that case come to the conclusion that both the loan transactions arise out of one security and having been given to the defendants on the same day constitutes one single transaction and therefore one single cause of action which is within its jurisdiction. This finding proceeds on an appreciation of the facts

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and the circumstances in which the facilities were extended to the defendants/petitioners as indeed the question whether different banking facilities granted to a borrower constitute one or more than one transactions, is a question which would depend upon the facts of each case. I find no error in the view taken by the Tribunal to warrant interference. The transfer of the suit to Tribunal and its trial is not in the circumstances legally bad.

15. In the result these writ petitions fail and are hereby dismissed with costs assessed at Rs.1,000/- in each case.

Sd/-
JUDGE

Abid/-
Jan/-